

1 nobody sign this? If you're not handed it,
2 you don't know you're supposed to sign.
3 You've -- you've signed something. You're
4 doing what the clerk is instructing you to
5 do, and if they don't hand it back, then, of
6 course, you wouldn't sign it because you've
7 never seen it. So this would be different if
8 -- if the voters had filled in all of their
9 stuff and not signed. This is done away from
10 the -- the voter, and the voter can hardly be
11 held to be at fault if they don't hand the
12 forms and have them sign it.

13 MR. CHAIRMAN: How do you know
14 that someone actually came in then --

15 MR. BROOKS: Well, we're going to
16 get --

17 MR. CHAIRMAN: -- under that
18 procedure?

19 MR. BROOKS: -- this log. These
20 numbers -- these numbers match. They're
21 looking up -- looking for the log over there.
22 You'll be able to get to this number and see
23 this person and this person's signature or
24 they wouldn't have proceeded, is what I'm
25 saying.

1 MR. CHAIRMAN: But how do you --
2 I don't know if that's dispositive of whether
3 or not someone showed up.

4 MR. BROOKS: Well, if they signed
5 it and they're in the poll --

6 MR. CHAIRMAN: Oh, the log is
7 signed.

8 MR. BROOKS: -- book, you can
9 look.

10 MR. CHAIRMAN: The log is signed,
11 is what you're saying?

12 MR. BROOKS: Yes. The log is
13 signed by the voter.

14 MR. KUZMAN: Is the log -- I'm
15 sorry. Is the log signed under penalties of
16 perjury?

17 MR. BROOKS: I -- I don't have
18 the log. I doubt it. But the penalty of
19 perjury thing only applies if the clerk's
20 staff bothers to give the form to them, but
21 what if it's not there?

22 MR. CHAIRMAN: Let me stop and
23 just ask, is someone getting this log that
24 Mr. Brooks speaks of?

25 MR. BROOKS: We asked one of the

1 Election Board members and she was saying she
2 would go get it. The clerk is here. She can
3 make sure that it gets done.

4 MR. CHAIRMAN: Clerk, can you nod
5 whether or not this is being retrieved?

6 MS. BUTLER: The logs -- the
7 last --

8 MR. CHAIRMAN: Just nod or "Yes"
9 or "no." Is the -- is someone getting the
10 log?

11 MS. BUTLER: It's locked up,
12 locked up behind the tape here (indicating).

13 MR. CHAIRMAN: Okay.

14 Do you want that log?

15 MR. BROOKS: Yes, I think that
16 would be evidence that the person who is --
17 who is going through all the proper
18 procedures has signed in. But even without
19 it, I think my point is the same. This
20 document is not -- it's not as though --

21 MR. CHAIRMAN: So you don't want
22 the log or you do?

23 MR. BROOKS: I think it would be
24 important to have it.

25 MR. CHAIRMAN: I'd like to direct

1 the State Board of Accounts to retrieve the
2 log immediately if possible.

3 MR. DURNIL: I wonder where they
4 have to go.

5 MR. CHAIRMAN: They're putting
6 coats on.

7 How far are you going and when should
8 we ride in for help if you don't come back?
9 Across the street?

10 Is it possible that we can leave this
11 precinct open and go on to other precincts
12 and come back?

13 MR. KING: If you get consent of
14 the parties.

15 MR. CHAIRMAN: Can I get the
16 consent of the parties to move on to other
17 precincts and come back to this one, or not?

18 MR. BROOKS: Is this the only
19 issue we had in this precinct? I forget.

20 MR. CHAIRMAN: Mr. Brown, is this
21 the only issue you have?

22 MR. BROWN: That's the only issue
23 we have in this precinct, yes, sir. And I --

24 MR. CHAIRMAN: Okay.

25 MR. BROWN -- I have no objection

1 to moving on.

2 MR. CHAIRMAN: Before we go on
3 and before they leave, is there anything else
4 over at the courthouse that you guys can
5 conceive we might need?

6 MR. BROOKS: I need a Diet Coke
7 because they're out in this vending machine
8 and I'm having to drink Diet Pepsi -- Diet
9 Dr. Pepper, Mr. Chairman. That is so wrong.

10 MR. CHAIRMAN: That's the
11 recommendation of the Recount Director.

12 Okay. Hearing none.

13 I think it's just the log, gentlemen.
14 Thank you.

15 And then we're going to leave --
16 Mr. Skolnik, what -- what number are we on?
17 Black --

18 MR. DURNIL: 6.

19 MR. CHAIRMAN: Black 6?

20 MR. SKOLNIK: We're presently at
21 Black -- precinct Black 6.

22 MR. CHAIRMAN: Black 6.

23 MR. SKOLNIK: Black 6. If we're
24 -- if we're going to leave that for right now
25 until we can retrieve the log and -- and any

1 other matters, we would then turn our
2 attention to Black 7.

3 MR. CHAIRMAN: Black 7.

4 Mr. Skolnik -- or Mr. Brown.

5 MR. BROWN: Yes. Thank you. The
6 exhibits in Black 7 we will be referring to
7 are Exhibit Number 3, 4 and Exhibit Number 2.
8 2, 3 and 4. I'm sorry I took those out of
9 order.

10 MR. CHAIRMAN: 2,3 and 4.

11 MR. SKOLNIK: Mr. Chairman, while
12 we're gathering the exhibits, I will note
13 that Black Number 7 contained a disputed no
14 vote --

15 MR. CHAIRMAN: Thank you.

16 MR. SKOLNIK: -- which is in the
17 far right-hand corner.

18 MR. CHAIRMAN: Counsel.

19 MR. BROWN: Thank you. This was
20 an unopened provisional ballot that was not
21 opened because the stated pro two form was
22 not completed. Our issue is, regardless of
23 any form or provisional materials not
24 completed, this voter went to the polling
25 location, first was -- is -- is in the poll

1 book with no notation, as in other cases --
2 and I don't have a -- we can find an example,
3 but if -- if the voter would have been
4 required to provide some other type of
5 identification or confirmation of residency,
6 that would be noted in the poll book. There
7 is no notation. She has a valid registration
8 listed on the poll book, which is Exhibit
9 Number 4 -- I'm sorry -- to keep up. And
10 then the Exhibit Number -- Number 2, it looks
11 like there was just lots of confusion. This
12 voter never -- we -- we -- we would say this
13 voter never should have been required to cast
14 a provisional ballot in the first place;
15 therefore, we would urge this provisional
16 ballot be opened and counted as a valid
17 ballot because it was an inappropriate
18 challenge and request that this voter vote
19 provisionally.

20 MR. CHAIRMAN: Thank you.

21 Counsel.

22 MR. BROOKS: It's unclear to us
23 exactly why this was made a provisional and,
24 therefore, I don't have an argument.

25 MR. CHAIRMAN: Okay.

1 Commission, questions.

2 MR. KUZMAN: Mr. Chairman --

3 MR. CHAIRMAN: Hearing -- hearing
4 -- hearing no questions --

5 MR. KUZMAN: -- I'd like to make
6 a motion that we open this and to be counted.

7 MR. CHAIRMAN: I'll second the
8 motion.

9 Discussion?

10 Hearing none.

11 All in favor?

12 MR. KUZMAN: Aye.

13 MR. CHAIRMAN: Aye.

14 All opposed?

15 MR. DURNIL: Make it unanimous.

16 MR. CHAIRMAN: Unanimous. Motion
17 carries unanimously. Thank you.

18 Let's have the ballot.

19 Any special procedure here, Counsel?

20 MR. KING: Mr. Chairman and
21 members of the Commission, in accordance with
22 the opinion of the public access counselor,
23 the Recount Commission and other bodies need
24 to take special care that the individual
25 identity of the provisional ballot voter is

1 not revealed, and so it may be helpful to
2 refer to this particular ballot in a way that
3 does not identify the voter personally.

4 MR. CHAIRMAN: Thank you.

5 Agree, gentlemen?

6 (Off the record - opening the
7 ballot)

8 MR. CHAIRMAN: Okay. The
9 Commission has opened the ballot and I can
10 read the vote for State Representative
11 District 76. The ballot records one vote for
12 Wendy McNamara. Any other -- anything for
13 the record, Counsel, or next argument on this
14 precinct?

15 MR. BROWN: We have nothing else
16 in Black 7.

17 MR. CHAIRMAN: Commission
18 members? Motions? Discussion?

19 MR. SKOLNIK: Mr. Chairman, a
20 point of clarification. I assume that this
21 is what the State Board of Accounts listed as
22 a disputed no vote, the one disputed no
23 vote --

24 MS. BELLAMY: Yes.

25 MR. SKOLNIK: -- in that

1 category. I think the appropriate -- there
2 being no further matters in this precinct, I
3 think the appropriate procedure for me would
4 be to read the -- the revised tally --

5 MR. CHAIRMAN: Please go ahead.

6 MR. SKOLNIK: -- based on that
7 vote.

8 Black Number 7, the -- the tally now
9 reads 196 votes for Mr. Deig, 184 votes for
10 Ms. McNamara, two invalid ballots cast for
11 Ms. McNamara, three no votes.

12 MR. DURNIL: I would move that we
13 accept that tally as final.

14 MR. KUZMAN: Second.

15 MR. CHAIRMAN: Motion and a
16 second.

17 Any discussion?

18 Hearing none.

19 All in favor say, "Aye."

20 MR. DURNIL: Aye.

21 MR. CHAIRMAN: Aye.

22 All opposed same sign.

23 Motion carries two to zero.

24 Mr. Skolnik.

25 MR. SKOLNIK: Mr. Chairman, we

1 now turn our attention to precinct Black
2 Number 8. This appears from my spreadsheet
3 to be another one of the precincts in which I
4 believe -- there were no disputed ballots --
5 or challenges listed on the State Board of
6 Accounts tally sheet, but I believe Mr. Brown
7 did raise --

8 MR. CHAIRMAN: Counsel.

9 MR. BROWN: Thank you,
10 Mr. Chairman and members of the Commission.

11 There were voters that, again, signed
12 the back of the poll book and according to
13 their registration voted in the wrong
14 precinct. And I would just like to note for
15 the record in this case we identified three
16 of those voters. We understand the
17 Commission's stance on this. We're willing
18 to move forward and now withdraw that
19 objection. I thank you for your time.

20 MR. CHAIRMAN: Thank you.

21 Show that withdrawn.

22 Any objection on the withdrawal?

23 Okay. Hearing none.

24 Brad.

25 MR. SKOLNIK: Mr. Chairman, the

1 tally in Black Number 8, 158 votes for
2 Mr. Deig, 155 votes for Ms. McNamara, one
3 invalid ballot tallied for Mr. Deig, seven no
4 votes.

5 MR. DURNIL: I would move that we
6 accept the tally as final.

7 MR. KUZMAN: Second.

8 MR. CHAIRMAN: Hearing a motion
9 and a second.

10 Discussion?

11 Hearing none.

12 All in favor say, "Aye".

13 MR. DURNIL: Aye.

14 MR. KUZMAN: Aye.

15 MR. CHAIRMAN: Aye.

16 Motion carries unanimously.

17 Mr. Skolnik.

18 MR. SKOLNIK: Thank you,
19 Mr. Chairman.

20 Precinct Black Number 9, this precinct
21 reflected that there was a disputed ballot
22 tally for Ms. McNamara.

23 MR. CHAIRMAN: Counsel.

24 MR. BROWN: We actually had a --
25 there -- there may have been a disputed

1 exhibit as an actual ballot. We actually are
2 going to refer to Exhibit Number 1 in Black
3 9.

4 MR. CHAIRMAN: Exhibit 1, Black
5 9.

6 Counsel.

7 MR. BROWN: Thank you,
8 Mr. Chairman.

9 Exhibit 1, Mr. John Shoening apparently
10 -- we don't know for sure, but apparently
11 appeared at the polls. You can see a little
12 notation, "Forgot to sign. Could not catch
13 him." He did not sign the poll book there we
14 -- therefore, we -- we don't believe he cast
15 a valid vote on Election Day.

16 The address change also seems to work
17 against -- I mean, it's not the address he is
18 registered at. We see no address change form
19 in the materials. Because this is not an
20 absentee ballot, we believe this was an
21 invalidly cast electronic ballot, and, again,
22 we feel that the proper remedy would be a
23 special election in this precinct and we
24 would urge you to consider that, and that is
25 our argument. Thank you.

1 MR. CHAIRMAN: Thank you.

2 Counsel.

3 MR. BROOKS: Well, once again,
4 the Democrats are suggesting that a gentleman
5 who didn't sign, who is entitled to vote, did
6 vote. It's obvious that the clerks, whose
7 responsibility it is to have them sign before
8 the ballot is handed out, there was a little
9 malfunction obviously. It's a long day.
10 People are busy. It's a minor -- minor
11 issue. They were there, obviously, because
12 the person the clerk indicated, so we don't
13 think you have special elections for one
14 person. You're going to find every election
15 with some mismatch of number of signatures
16 versus votes, and I'm a little perplexed as
17 to why the address -- I believe Mr. Brown's
18 argument is that because the address written
19 in is not the voter's registered address that
20 somehow that works against them, but as far
21 as I understand, once you check the address
22 change box, one would certainly expect that
23 that -- the address be different, otherwise,
24 you wouldn't check that box. Thank you.

25 MR. CHAIRMAN: Okay. Thank you.

1 Questions from Commission members?

2 Hearing none.

3 I have a question for Counsel. What is
4 the law on this?

5 MR. KING: Mr. Chairman and
6 members of the Commission, although signing
7 the poll list is required at a precinct when
8 a voter presents themselves to vote under
9 311-8, this would be characterized as an
10 error under 312-112 by a precinct election
11 officer, which would allow a ballot to be
12 counted in a recount proceeding not
13 withstanding that error.

14 MR. CHAIRMAN: And, Counsel, do
15 you -- and I'll get to co-counsel in a minute
16 -- do you recall any cases where we decided
17 the same issue and what was the result?

18 MR. KING: Mr. Chairman, I recall
19 an issue from 1998 in the --

20 MR. CHAIRMAN: I knew you would,
21 if anybody.

22 MR. BROOKS: What time was that,
23 Mr. King?

24 MR. KING: -- in the Bales -- in
25 the Bales/Ellington recount, I believe there

1 were -- were similar --

2 MR. CHAIRMAN: And what did they
3 do there?

4 MR. KING: The vote of the voter
5 was not invalidated or the precinct total
6 amended based on the failure of a poll worker
7 to sign -- or rather a --

8 MR. CHAIRMAN: Voter.

9 MR. KING: -- a precinct voter to
10 sign absent findings of misconduct, et
11 cetera.

12 MR. CHAIRMAN: Thank you.

13 Counsel, do you have anything to add?

14 MS. BARNES: Yes. Thank you,
15 Mr. Chairman.

16 While I don't recall the case in 1998,
17 having graduated from high school recently,
18 but -- but I -- I think -- I think Counsel's
19 characterization of this being an error on
20 the part of the poll worker is not a
21 characterization for Counsel to make, but
22 maybe a characterization for the Recount
23 Commission to make. I -- I would agree with
24 Brad that 311-8 is mandatory. It requires
25 the voter to sign the poll book before they

1 be allowed to vote. I think perhaps what the
2 Chairman was asking was about --

3 MR. CHAIRMAN: No. I was asking
4 about the signature.

5 MS. BARNES: -- doing an address
6 change?

7 MR. CHAIRMAN: No, I wasn't. I
8 was asking about the signature, and I --

9 MS. BARNES: Okay.

10 MR. CHAIRMAN: -- asked about it,
11 and I asked for Brad's opinion and -- and he
12 gave it in his recollection, so I appreciate
13 it.

14 MR. KUZMAN: Then I'll go ahead
15 and ask about the address change issue.

16 MR. KING: I'm sorry,
17 Commissioner, could you --

18 MR. KUZMAN: I'm sorry.

19 MR. KING: -- could you restate
20 the -- the question.

21 MR. KUZMAN: What about the
22 address change listed on the poll book? Do
23 we have any cases? What's the law on that?

24 MR. KING: I don't have the
25 exhibit.

1 MR. KUZMAN: Oh, I'm sorry.

2 MR. KING: Commissioner, state
3 law permits an individual to change the
4 address on the poll list if it's within the
5 same precinct.

6 MR. KUZMAN: Precinct? That's
7 right then. And we -- we just didn't want to
8 make an assumption.

9 MR. KING: I have no knowledge,
10 of course.

11 MR. CHAIRMAN: Any other
12 questions from Commission members?

13 Hearing none.

14 Any motions?

15 MR. DURNIL: Again, I would -- on
16 the basis that the voter did everything he
17 was supposed to do, including changing his
18 address and there being a clerical error on
19 the part of the clerk, I would move that we
20 not accept the motion.

21 MR. CHAIRMAN: Motion --

22 MR. DURNIL: Or not accept the --

23 MR. CHAIRMAN: Motion to count
24 this ballot?

25 MR. DURNIL: Right.

1 MR. CHAIRMAN: Is that correct?

2 Okay.

3 I'll second it.

4 Discussion?

5 I have a question for Counsel. Is
6 there any way on these poll books or anywhere
7 else to record whether or not valid ID was
8 produced at the precinct by the voter?

9 MS. BARNES: There's not
10 currently, Mr. Chairman.

11 MR. CHAIRMAN: My concern here is
12 we're in a situation where, again, the
13 signature has been argued that that's all
14 that should be needed. As many know, I've
15 argued and we have a successful Indiana law
16 that calls for a photo ID at the polls for
17 this kind of reason, and the other reason
18 would be that signatures don't stay the same
19 throughout the voter's life. And now there's
20 a situation where we don't know for sure, at
21 least I can't tell whether or not this person
22 actually came to the polling place and was
23 real. Is there any way, Counsel, for me to
24 know that?

25 MR. KING: No, Mr. Chairman, not

1 -- not from my knowledge of the document
2 that's before you.

3 MR. CHAIRMAN: And what would the
4 remedy be then if we were not to count this?
5 Would we -- would the remedy be a special
6 election in that precinct or which vote do we
7 take back out or --

8 MR. KING: Mr. Chairman, if I
9 may, the -- the Commission addressed the
10 remedy of a special election in a contest in
11 the Vorst v Waltz matter in May 2004
12 following that primary. In that case the
13 Petitioner had not filed a contest, but
14 instead Counsel sought a special election as
15 part of the recount proceeding. The
16 Commission denied the request for a special
17 election stating that it was not authorized
18 under the statute that Counsel for Petitioner
19 referred to, 3-12-11-18C, on the grounds that
20 that statute had to be read in relationship
21 with Section 3 of the same chapter in which
22 the same grounds for filing a contest were
23 set forth as the grounds for granting a
24 special election. So that's been the
25 Commission's position on granting a special

1 election in a contest -- or rather in a
2 recount proceeding rather than a contest in
3 the past. So the remedy would not, in
4 accordance with that understanding, be a
5 special election.

6 MR. DURNIL: I sort of stumbled
7 through my motion, but my motion was that we
8 count this -- this ballot.

9 MR. CHAIRMAN: And I second that.

10 Because this, as I can tell, only
11 happened once and I don't see any pattern of
12 it -- I'm not prepared to say there was a
13 deliberate act or series of acts or anything
14 like that -- I am going to be voting to count
15 this ballot. I'm also going to be watching
16 to see if this is a pattern in this -- this
17 county or in any of these precincts.

18 All in favor say, "Aye."

19 MR. DURNIL: Aye.

20 MR. CHAIRMAN: Aye.

21 All opposed say, "Nay."

22 MR. KUZMAN: Nay. But I can
23 explain my vote.

24 I think you summed it up best when
25 General Assembly acted to pass voter ID to

1 protect the integrity of the system. This
2 flies right in the face of protecting the
3 integrity of the system by not signing -- by
4 not signing poll books, because of -- we
5 don't know if this person had a valid ID,
6 which is a -- which is a good idea that --
7 that probably needs to be added to poll books
8 check -- checkmark, but I think it flies --
9 this flies sort of in the face of what we
10 passed in the General Assembly.

11 MR. DURNIL: Just in a little way
12 of defending the clerk there in the
13 precinct --

14 MR. KUZMAN: Sure.

15 MR. DURNIL: -- I'm sure that
16 when -- when the fellow changed his address
17 and he wrote it in, he probably thought they
18 was done in the process.

19 MR. KUZMAN: Agree. But I think
20 the Secretary brought up a great point of we
21 need to look at -- look at checking that a
22 valid ID was checked and I think that would
23 solve a lot of problems.

24 MR. CHAIRMAN: Got it.

25 MR. KUZMAN: You brought up a

1 very good point.

2 MR. CHAIRMAN: And so yours was
3 a --

4 MR. KUZMAN: No.

5 MR. CHAIRMAN: -- no.

6 So motion carries two to one.

7 Mr. Skolnik.

8 MR. SKOLNIK: Mr. Chairman, if
9 there are no other disputes or challenges
10 regarding this precinct, which it appears
11 there are not, the tally for Black Number 9
12 reflects that there's 75 votes for Mr. Deig,
13 51 votes for Ms. McNamara, four no votes.

14 MR. DURNIL: Wouldn't it be 52?
15 If we add the challenge, wouldn't the
16 challenge --

17 MR. SKOLNIK: I'm sorry. The
18 vote was -- and the State Board of Accounts
19 can confirm this. That was a disputed valid
20 ballot that was tallied by --

21 MR. DURNIL: Oh, I see.

22 MR. SKOLNIK: -- the State Board
23 of Accounts --

24 MR. DURNIL: I'm sorry.

25 MR. SKOLNIK: -- so it's already

1 included --

2 MR. DURNIL: I got you.

3 MR. SKOLNIK: -- in the tally for
4 Ms. McNamara.

5 MR. DURNIL: I move we accept
6 that tally as final.

7 MR. CHAIRMAN: Second.

8 All in favor, "Aye".

9 MR. DURNIL: Aye.

10 MR. CHAIRMAN: Aye.

11 All opposed?

12 MR. KUZMAN: Aye.

13 MR. CHAIRMAN: Motion carries two
14 to one.

15 Mr. Skolnik.

16 MR. SKOLNIK: Mr. Chairman and
17 members of the Commission, I've been provided
18 by the State Board of Accounts with the
19 voting logs that I believe we requested they
20 retrieve with reference to Black Number 6. I
21 don't know if you want to address that now or
22 if you want to proceed with --

23 MR. CHAIRMAN: Yes. Let's
24 revisit Black 6, if we could. And if Counsel
25 can approach to get the -- have you been

1 provided copies?

2 MR. BROOKS: They made copies for
3 us. Thank you.

4 MR. SKOLNIK: Would you like for
5 me to mark this as Exhibit --

6 MR. CHAIRMAN: C2.

7 MR. SKOLNIK: -- C2? Thank you.

8 Mr. Chairman, I marked the top one.
9 That will be the original.

10 MR. DURNIL: So these are all
11 copies?

12 MR. SKOLNIK: Those are copies of
13 one document.

14 Am I correct?

15 MR. ARTHUR: Yes.

16 MR. SKOLNIK: Thank you.

17 MR. CHAIRMAN: Where's the
18 fellow? Oh, I see. Now I see the code
19 numbers. Okay. Now we're cooking with gas.
20 I need -- I'm sorry. I need the Black 6
21 evidence returned to me. I think I gave it
22 back. Thank you.

23 MR. BROOKS: Mr. Chairman,
24 apparently this log does not go as high as
25 these numbers, at least the pages we got.

1 (Off the record - Discussion
2 regarding log)

3 MR. BROOKS: I guess we ask --

4 MR. CHAIRMAN: It's time to call
5 the clerk.

6 MR. BROOKS: -- where's the rest
7 of it.

8 MR. CHAIRMAN: I'm going to call
9 the clerk of the Posey County Circuit Court
10 to come and testify on all matters regarding
11 Black 6.

12 Donna, could you raise your right hand.

13 MS. BELLAMY: Mr. Chairman, we
14 did find additional pages in another
15 location.

16 MR. CHAIRMAN: Okay. Why don't
17 we hold off and go to another -- go to
18 another precinct and knock that one out,
19 hopefully, and come back to Black 6.

20 Give us a second, Donna. Thank you.

21 MR. SKOLNIK: Mr. Chairman and
22 members of the Commission, the next precinct
23 would be Black Number 10.

24 MR. CHAIRMAN: Counsel.

25 MR. BROWN: Thank you,

1 Mr. Chairman.

2 The exhibits we'll be referring to are
3 Exhibits 20 and 21 and 22.

4 MR. CHAIRMAN: 20, 21 and 22.

5 MR. BROWN: Correct.

6 MR. CHAIRMAN: Is your Exhibit 22
7 an affidavit of request for transfer of voter
8 registration?

9 MR. BROWN: Yes, sir.

10 MR. CHAIRMAN: Okay.

11 MR. BROWN: Okay. Thank you.

12 MR. CHAIRMAN: Please proceed.

13 MR. BROWN: Thank you,

14 Mr. Chairman and members of the Commission.

15 Exhibit 20 is the last page of the poll
16 book. Precinct Black 10, Exhibit 21 is the
17 page in alphabetical order which this voter
18 would have appeared had they been registered
19 in the precinct. This is, again, an instance
20 of an electronic ballot cast by a voter that
21 was not registered in this precinct. The
22 reason I bring this to you, not to waste the
23 Commission's time, is there is additional
24 facts here.

25 The affidavit you see for a request of

1 transfer of registration seems to be valid.
2 One, the -- the voter is entitled to fill
3 these out but should have been required to
4 vote in the precinct they were actually
5 registered in on Election Day, or in case of
6 a move, right before. I think even there's
7 provisions where you go back to that precinct
8 even if you technically moved before Election
9 Day.

10 The -- the -- the concern here is --
11 and I'll -- I'll bring this up in a second --
12 the voter's registration, the address listed
13 on that registration -- there's actually two
14 on the -- what we think is the voter's
15 registration for -- for precinct Black 4. As
16 you'll -- as you see on the affidavit,
17 there's a P.O. Box 718 on Shireman Road in
18 Wadesville. This -- there's two different
19 addresses. There was an address change and
20 registration on file at the Posey County
21 Clerk's office, neither of which matched any
22 of the addresses for this person. We -- we
23 don't know if this person is even validly
24 registered at -- at any of these addresses,
25 to be honest.

1 So I'll show the opposing Counsel and
2 bring the exhibit up.

3 MR. CHAIRMAN: Counsel.

4 Or were you finished, Mr. Brown?

5 MR. SKOLNIK: Mr. Chairman, this
6 is Exhibit P4.

7 MR. CHAIRMAN: Thank you.

8 MR. BROWN: The -- the -- again,
9 the remedy would be request for a special
10 election because this ballot cannot be
11 retrieved as connected to this voter and,
12 again, we would urge as we go forward the
13 Commission begin to examine the -- as it's
14 been discussed, the totality of the
15 circumstances. The votes are adding up. I
16 haven't actually penciled a tally, but we're
17 beginning to see a pattern here which we in
18 the beginning believed to be 30 to 35 votes
19 where people did not vote in the valid -- in
20 the correct precinct, invalidly executed an
21 electronic ballot, and so we urge the
22 consideration of a special election in this
23 precinct as well. Thank you.

24 MR. CHAIRMAN: Counsel.

25 MR. BROOKS: First of all, as in

1 other issues, it is not patently clear that
2 this voter voted at all, you know. The
3 second -- secondly, the same thing. I mean,
4 we're here today to count ballots, and as you
5 said, Mr. Chairman, you're going to be done.
6 So what is the effect of -- in the event this
7 voter did, in fact, vote, of which there's
8 really no proof, what -- what is the effect
9 of that? Say, okay, that ballot doesn't
10 count, but we have no idea what the vote is
11 for. This allegation simply doesn't change
12 any vote totals. I mean, there's nothing to
13 be done here, and -- and, again, I guess I
14 missed whether there's a special election,
15 but this -- the contest action is not
16 available. We're here to count votes today.
17 This Commission's charge is to count ballots,
18 and this is an unsubstantiated charge as to
19 whether this person voted or not. But
20 there's no ballot for you to examine and
21 count, so you can only count the ballots in
22 the way that it's been done on the -- by
23 using the vote -- voting tapes plus the
24 hardcopies. Those are the only things you
25 can count if we're going to get this done

1 today. Thank you, Your Honor -- or
2 Mr. Chairman.

3 MR. CHAIRMAN: Thank you.

4 Questions from the Commission?

5 A very brief response.

6 MR. BROWN: Very brief. This
7 does matter. This is treating Election Day
8 voters as if all bets are off. If you can't
9 count these ballots -- first of all, there's
10 164 signatures and 164 votes cast. The State
11 Board of Accounts tallied that. We think the
12 person voted. If you take all these
13 circumstances together -- and I know we keep
14 saying it doesn't affect House District 76.
15 They still voted for that election --
16 essentially we're -- we're saying absentee
17 voters and early -- absentee voters that walk
18 in, those voters are somehow going to be
19 scrutinized much more highly. And I know the
20 Court has said at times that's the case, but
21 that means that if you go to the polls, all
22 bets are off. So are we going to promote,
23 you know, situations where voters just ignore
24 their precinct polling locations, ignore the
25 rules of Election Day voting just because

1 this Commission feels it doesn't have the
2 ability -- and I'm not -- I think you do have
3 the ability to review electronic ballots and
4 I know our statutes -- I believe our statutes
5 do need updated. Unfortunately that's not
6 what we have in front of us today --

7 MR. CHAIRMAN: Okay.

8 MR. BROWN: -- so I thank you.

9 MR. CHAIRMAN: Thank you.

10 Questions from the Commission?

11 Discussion?

12 Motions?

13 MR. DURNIL: Well, the same
14 argument as before. These have been in
15 several precincts where the -- the clerks
16 have made mistakes or whatever or not done
17 what they should have done. We don't know in
18 any one of these cases if the voter did
19 anything wrong. The voter came in with well
20 intentions. We don't know how they voted and
21 how to change the vote, so I would move that
22 we deny the request.

23 MR. CHAIRMAN: Second?

24 Discussion?

25 I would say I'm not seeing that there's

1 an inability of this Commission to act here
2 under the law. I just -- I don't think the
3 -- so far I'm not seeing the pattern except
4 for maybe some better training of poll
5 workers, which I may get to. But that again
6 is no fault of the voter. If this voter, in
7 fact, did vote, there's -- there's no
8 evidence that even if they voted in the wrong
9 precinct that they didn't get a chance to
10 vote in this particular race since the county
11 -- or the district covers the whole county.
12 So I'm just not seeing the pattern that you
13 describe yet, so for that reason, I'm going
14 to be voting for Mr. Durnil's motion.

15 All in favor?

16 MR. DURNIL: Aye.

17 MR. CHAIRMAN: Aye.

18 All opposed?

19 MR. KUZMAN: Aye.

20 MR. CHAIRMAN: Motion carries two
21 to one.

22 Mr. Skolnik.

23 MR. SKOLNIK: Are there any other
24 disputed -- or when I looked at Black Number
25 10, it reflected that there were nine

1 disputed valid ballots tallied for Mr. Deig
2 and I believe that that -- that's all that
3 there was in terms of any disputed ballots.

4 Mr. Brooks, I don't know whether you
5 withdraw --

6 MR. BROOKS: Yes, we do.

7 MR. SKOLNIK: Mr. Chairman, there
8 being no further disputed or challenged
9 ballots in Black Number 10, the tally
10 reflects that there were 159 votes for
11 Mr. Deig, 77 votes for Ms. McNamara, six no
12 votes.

13 MR. DURNIL: I move we accept
14 that tally as final.

15 MR. SKOLNIK: I'm sorry. Before
16 -- let me amend that --

17 MR. DURNIL: Okay.

18 MR. SKOLNIK: -- so we get the --
19 get our record straight here.

20 One hundred and -- the tally reflects
21 159 votes for Mr. Deig, 77 for Ms. McNamara,
22 two invalid ballots tallied for Mr. Deig and
23 six no votes.

24 MR. DURNIL: I move we accept
25 that tally as final.

1 MR. CHAIRMAN: Second.

2 All in favor?

3 Aye.

4 MR. DURNIL: Aye.

5 MR. CHAIRMAN: Opposed?

6 MR. KUZMAN: Aye.

7 MR. CHAIRMAN: Motion carries two
8 to one.

9 Mr. Skolnik.

10 MR. SKOLNIK: Mr. Chairman, we
11 move next to Black Number 11. The tally --
12 and I think probably, for purposes of
13 clarity, I'll read off the tallies the State
14 Board of Accounts presently has it and then
15 the parties can address any objected -- any
16 disputed ballots there.

17 The tally at present reflects 147 votes
18 for Mr. Deig, 121 for Ms. McNamara, one
19 disputed valid ballot tallied for Mr. Deig,
20 two invalid ballots for Mr. Deig, five no
21 votes. That's Black Number 11.

22 MR. CHAIRMAN: Counsel.

23 MR. BROWN: Thank you,

24 Mr. Chairman and members of the Commission.

25 Note for the record the same situation

1 as we've seen. Two voters -- and I can have
2 the -- I'm not going to request the exhibits
3 be brought out, but I'd like to note the
4 objection for the record. There were two
5 voters not registered in this precinct that
6 were allowed to vote in this precinct, and
7 with that objection noted, we would -- we
8 would then withdraw the objection for
9 consideration.

10 MR. CHAIRMAN: And for
11 clarification, they were registered,
12 correct --

13 MR. BROWN: Correct.

14 MR. CHAIRMAN: -- somewhere? And
15 that somewhere --

16 MR. BROWN: These were
17 registered --

18 MR. CHAIRMAN: -- was in Posey
19 County?

20 MR. BROWN: -- in -- yes, in a
21 different precinct in Posey County. Yes.

22 MR. CHAIRMAN: Okay.

23 MR. KUZMAN: I'm confused. Are
24 you -- you're making the objection, but
25 you're withdrawing your objection?

1 MR. BROWN: I'm noting the
2 objection for the record, but I'm withdrawing
3 it from consideration because the facts
4 aren't any different from --

5 MR. KUZMAN: Okay.

6 MR. BROWN: -- the two cases
7 we've already considered.

8 MR. KUZMAN: The prior ones? I
9 understand. Okay.

10 MR. BROWN: And at -- at -- at
11 the end, I would maybe -- this is another two
12 voters in another precinct. I would -- I
13 would urge the Commission to keep it in mind
14 as we move forward, but at this point, we
15 will withdraw and move on.

16 MR. CHAIRMAN: And you're welcome
17 to make a statement for the record at the end
18 of this as well.

19 MR. BROWN: Okay.

20 MR. CHAIRMAN: Okay. Noted
21 withdrawn.

22 MR. SKOLNIK: Mr. Brooks, there
23 is, I believe, a disputed ballot tallied for
24 Mr. Deig. Do you withdraw?

25 MR. BROOKS: We withdraw all our

1 challenges in this precinct.

2 MR. SKOLNIK: Mr. Chairman, the
3 tally for Black Number 11 reflects 147 votes
4 for Mr. Deig, 121 votes for Ms. McNamara, two
5 invalid ballots cast for Mr. Deig, five no
6 votes.

7 MR. DURNIL: I move we accept the
8 tally as final.

9 MR. CHAIRMAN: Second?
10 All in favor?
11 Aye.

12 MR. DURNIL: Aye.

13 MR. CHAIRMAN: Any opposed?

14 MR. KUZMAN: Aye.

15 MR. CHAIRMAN: Motion carries two
16 to one.

17 Mr. Skolnik.

18 MR. SKOLNIK: Mr. Chairman, Black
19 Number 12, this appears to be another --
20 according to my calculations, this is another
21 precinct in which there were no disputed
22 ballots listed on the tally of the State
23 Board of Accounts but for which Mr. Brown
24 identified that there was some concern --
25 questions or challenges he had.

1 MR. CHAIRMAN: Counsel.

2 MR. BROWN: Yes. This is an
3 invalid provisional ballot. It was -- the
4 voter went to the polls, and the affidavit
5 says the voter did not present a photo ID as
6 required by law. The voter went into the
7 clerk's office, presented the ID -- I'm sorry
8 -- to cast a provisional ballot, went to the
9 clerk's office, presented the ID. At the
10 Election Board meeting ten days -- ten days
11 after, the ballot was opened and ruled
12 invalid because it lacked initials of the
13 clerk's from the polling location, and we
14 would urge this ballot be counted because it
15 was no fault of the voter in not initialing
16 the ballot, and we would ask for your
17 consideration. Thank you.

18 MR. CHAIRMAN: Counsel.

19 MR. BROOKS: I'm going to make
20 sure I'm on the right exhibit.

21 Exhibit 6, Adam?

22 MR. BROWN: I'm sorry. I should
23 have --

24 MR. BROOKS: Yes.

25 MR. BROWN: -- I -- I went too

1 fast. For the --
2 MR. BROOKS: Okay. Is that the
3 one --
4 MR. BROWN: -- Commission,
5 Exhibit --
6 MR. BROOKS: -- we're talking
7 about now?
8 MR. BROWN. Black 12 --
9 MR. BROOKS: Okay.
10 MR. BROWN: -- Exhibit Number 6.
11 I'm sorry.
12 MR. SKOLNIK: Black 12,
13 Exhibit --
14 MR. BROWN: I'm sorry.
15 MR. SKOLNIK: -- Number 6.
16 MR. BROOKS: Are you ready?
17 MR. CHAIRMAN: Counsel, we're
18 ready.
19 MR. BROOKS: Okay. Mr. Chairman
20 and Commission members, if you will look on
21 -- oh, these are stapled, but the privacy
22 envelope and look on the back, there are two
23 things. First of all, you'll note that the
24 challenge is based on a failure to present
25 proof of ID. The -- the first flaw with this

1 provisional vote is that they did not fill
2 out the affidavit of the challenged voter at
3 the bottom, which is -- which is required by
4 law; and, secondly, if you will flip to the
5 photo ID picture, you'll see that that
6 driver's license expired in May of 2008,
7 which means that that is not a valid photo ID
8 because it expired prior to the most recent
9 general election. As a matter of law, this
10 ID is -- is inadequate and this provisional
11 vote should not be counted.

12 MR. CHAIRMAN: Thank you.

13 Questions from the Commissioners.

14 What is the law, Counsel, regarding
15 initials on ballots and whether or not
16 they're to be counted? Is that a strict
17 adhering or is there leeway there? How is
18 that read?

19 MR. KING: Mr. Chairman and
20 members of the Commission, there are two
21 statutes that apply to the initials on
22 ballots, 312-112 and 312-113. 312-112, which
23 has been discussed earlier, indicates that an
24 act or failure to act by an election officer
25 does not disqualify a ballot unless there's

1 evidence of fraud, tampering or misconduct.

2 312-113 has a special stricter rule
3 with regard to absentee ballots which states
4 that the whole ballot may not be counted
5 unless it is endorsed with a bipartisan set
6 of initials.

7 Of course, on Election Day ballots that
8 are paper-optical-scanned ballots, that are
9 passed out at precincts or provisional
10 ballots would be required to bear the
11 bipartisan set of the poll clerk's initials,
12 but they are not set forth as a fatal defect
13 under 312-113 if they are not added.

14 MR. CHAIRMAN: Motions?

15 Discussion?

16 MS. BARNES: Mr. Chairman --

17 MR. CHAIRMAN: Thank you.

18 MS. BARNES: -- there are a
19 couple of other statutes that apply. May I
20 address --

21 MR. CHAIRMAN: Please.

22 MS. BARNES: -- that as well?

23 MR. CHAIRMAN: Thank you.

24 MS. BARNES: Thank you. While
25 the statute Mr. King cited should be

1 considered by the Commission, there is an --
2 a more recent statute adopted in 2005 that's
3 found at 3-11.7-5-1.5. It's on page 363.

4 MR. CHAIRMAN: Thank you.

5 MS. BARNES: It's Section 1.5.
6 It deals with counting of provisional ballots
7 and it instructs the County Election Board --
8 this is the statute that's used after the
9 election when the County Election Board is
10 considering whether or not to count
11 provisional ballots and this is the section
12 that was adopted in 2005 by the General
13 Assembly, which says if the voter does
14 everything right, even if a statute was not
15 complied with by a poll clerk, the ballot
16 should be counted, and it -- and it
17 specifically refers to that. This deals
18 specifically with provisional ballots. More
19 specific statutes govern more general
20 statutes. A later adopted statute governs an
21 older statute. Those are the rules of
22 statutory interpretation. And -- and it
23 would be my advice that this ballot should be
24 counted.

25 MR. KING: I'd like,

1 Mr. Chairman, if I could respond briefly.

2 MR. CHAIRMAN: Thank you.

3 MR. KING: Mr. Chairman, I -- I
4 don't disagree with the statutory information
5 presented by Ms. Barnes, but I think before
6 jumping to the conclusion that the
7 provisional ballot should be counted, I think
8 it's important to note the Commission's past
9 practice particularly in, I believe it was
10 the -- the Vorst/Waltz recount, which was to
11 determine what evidence was available to the
12 County Election Board regarding why a
13 provisional ballot was rejected. In cases
14 where there has been no evidence or
15 insufficient evidence, the Commission has
16 voted to open and count provisional ballots.
17 Where there is evidence to support the County
18 Election Board's determination, the
19 Commission has, depending upon the evidence
20 before it, honored that County Election Board
21 determination.

22 MR. BROOKS: Mr. Chairman, could
23 I maybe help clear up a little bit. We're
24 not -- we're not suggesting that the
25 provisional ballots have to have initials.

1 What we're suggesting -- so if that's the
2 argument, we're not making the argument that
3 it has to have the initials. What we're
4 saying is that the challenge on Election Day
5 was for lack of ID and that the person who
6 came in presented an -- an invalid ID, so
7 while the Local Election Board may have
8 quickly looked at the initial issue and said
9 we're not counting it, the fact of the matter
10 is that the challenge at the poll was
11 absolutely correct. It's for lack of -- lack
12 of photo ID. The ID presented is not valid.
13 Under 3-5-2-40.5 it tells you what proof of
14 identification is, and this is not a valid
15 ID. You don't have ID and you don't bring in
16 that valid ID, you don't vote provisionals.

17 MR. CHAIRMAN: Thank you.

18 Two -- there were two security
19 envelopes presented here with one set of
20 initials on it, so if I caused that, I
21 apologize.

22 You're talking about Exhibit 7; is that
23 correct?

24 MR. BROOKS: No. 6.

25 MR. CHAIRMAN: Okay. The exhibit

1 says "No initials on ballot", so...

2 MR. BROOKS: But that was -- just
3 for clarification, Mr. Chairman, that is the
4 County Election Board's notes. On the back
5 is the Election Day challenge which says lack
6 of ID, and then the photo that was brought in
7 is not a valid ID.

8 MR. DURNIL: What was the cite
9 you gave us for it, 352?

10 MR. BROOKS: 352-40.5, page
11 number 38.

12 MR. CHAIRMAN: I'll let Mr. Brown
13 sum up with anything he wants to add real
14 quickly.

15 MR. BROWN: I have nothing to
16 add. Thank you.

17 MR. CHAIRMAN: Thank you.

18 Is there a motion?

19 MR. KUZMAN: Mr. Chairman, I move
20 that we accept this ballot. This Commission
21 has consistently ruled today that it is not
22 the voter's fault. We should count that
23 vote. In this instance, you have a voter
24 show up on November 2nd and make the effort
25 to come back November 3rd, and somebody

1 probably should have caught that error on the
2 ID and I would ask that we count this vote.

3 MR. CHAIRMAN: Okay. There's a
4 motion. I'll second it for discussion
5 purposes, and the discussion would be that,
6 yeah, someone should have caught it. It
7 should have been the voter. The voter has a
8 responsibility to provide a valid ID and they
9 didn't.

10 MR. DURNIL: I think the problem
11 is that the vote is invalid if the voter is
12 not eligible to vote.

13 MR. CHAIRMAN: All in favor -- or
14 in favor of the motion, yeah, signify by
15 saying, "Aye."

16 MR. KUZMAN: Aye.

17 MR. CHAIRMAN: All opposed, same
18 sign.

19 MR. DURNIL: Aye.

20 MR. CHAIRMAN: Aye.

21 Motion is defeated.

22 Mr. Skolnik.

23 MR. SKOLNIK: Counsel, are there
24 any other challenged votes in this -- or
25 disputed votes in this precinct?

1 MR. BROWN: No, we don't have
2 any.

3 MR. SKOLNIK: Mr. Chairman, the
4 tally for precinct Black Number 12 reflects
5 240 votes for Mr. Deig, 215 for Ms. McNamara,
6 one invalid ballot tallied for Mr. Deig, 70
7 no votes.

8 MR. DURNIL: I would move that we
9 make that tally final.

10 MR. CHAIRMAN: Second.

11 Discussion?

12 All in favor?

13 Aye.

14 MR. DURNIL: Aye.

15 MR. CHAIRMAN: All opposed?

16 MR. KUZMAN: No. And just for
17 the record, I'm reading real quickly. I'm
18 noticing the instructions to the provisional
19 voter just says bring present proof of
20 identification when required by law. So I'm
21 not sure the voter would notify -- know if
22 that if it was a valid ID or not, it could be
23 brought to the law.

24 MR. CHAIRMAN: Okay. Motion
25 carries two to one.

1 Mr. Skolnik.

2 MR. SKOLNIK: Mr. Chairman, the
3 next precinct would be Black Number 13, which
4 currently reflect -- the tally currently
5 reflects 86 votes for Mr. Deig, 46 for
6 Ms. McNamara, one disputed valid ballot
7 tallied for Mr. Deig, one invalid ballot
8 tallied for Mr. Deig, two no votes.

9 MR. CHAIRMAN: Counsel.

10 MR. BROWN: We have no remaining
11 objections in this precinct.

12 MR. BROOKS: Those are our
13 challenges and we -- we withdraw them.

14 MR. CHAIRMAN: Thank you.

15 Mr. Skolnik.

16 MR. SKOLNIK: Mr. Chairman, there
17 being no further challenges or any challenges
18 being withdrawn, the tally in Black Number 13
19 reflects 86 votes for Mr. Deig, 49 for Ms. --
20 I'm sorry -- 86 for Mr. Deig, 46 for
21 Ms. McNamara, one invalid ballot tallied for
22 Mr. Deig, two no votes.

23 MR. DURNIL: I would move we make
24 that tally final.

25 MR. CHAIRMAN: Second.

1 All in favor?

2 Aye.

3 MR. KUZMAN: Aye.

4 MR. CHAIRMAN: Motion carries
5 unanimously.

6 Mr. Skolnik. Mr. Skolnik.

7 MR. SKOLNIK: Thank you,
8 Mr. Chairman.

9 The next precinct would be Center
10 North. Mr. Chairman and members of the
11 Commission, this appears to be another
12 precinct that does not contain any disputed
13 ballots on the State Board of Accounts tally
14 sheet but that Mr. Brown informed us that
15 there were certain matters they challenged.

16 MR. BROWN: We disputed -- and
17 for our example, it's Exhibit 1. It's an
18 unopened absentee ballot.

19 MR. CHAIRMAN: Center North,
20 Exhibit 1.

21 MR. BROWN: Yeah. Sorry. Center
22 North, Exhibit 1.

23 (Off the record - Distributing
24 exhibit)

25 MR. CHAIRMAN: We're ready.

1 MR. BROWN: Thank you,
2 Mr. Chairman and members of the Commission.

3 This was an absentee ballot. The
4 ballot -- the affidavit -- if you look at the
5 ABS6 form, on the one side it was validly
6 executed. The ballot was postmarked on
7 October 23rd, but some -- for some reason did
8 not arrive until November 9th, 2010. That's
9 through no fault of the voter. We believe
10 that this absentee ballot should, therefore,
11 be opened and counted, and that is what we
12 would ask for the Commission's consideration.

13 MR. CHAIRMAN: Okay. Thank you.

14 Counsel.

15 MR. BROOKS: Do you have the
16 originals? You're probably going to have to
17 look at it. The -- the postmark on these
18 security envelopes are -- oh, I guess you
19 can. I'm looking on the wrong side. That
20 would be helpful.

21 These are Pitney Bowes postmarks and
22 these envelopes are sent out to voters
23 prepaid, so the fact that this looks
24 postmarked October 23rd does not mean that's
25 when it was mailed. That was when --

1 presumably, at some time prior to the time it
2 was sent out. So in the absence of any proof
3 of when it was actually mailed or any other
4 special circumstances, they say that it was
5 received late, and that's what the law
6 requires, that it be received on -- by
7 Election Day.

8 MR. CHAIRMAN: Is it your
9 assumption that that's what's happened, the
10 prepaid stamp, or do you know that from --

11 MR. BROOKS: They're on --
12 they're on all of them, Mr. Chairman, I mean,
13 unless they've got a whole lot of voters in
14 Posey County with their own Pitney Bowes --

15 MR. CHAIRMAN: Oh, I see.

16 MR. BROOKS: -- postage machines.

17 MR. CHAIRMAN: You never know.

18 MR. BROOKS: I'm not suggesting
19 they might not. I just thought it was
20 unlikely.

21 MR. CHAIRMAN: Okay.

22 Questions from Commissioners?

23 Hearing none.

24 Motions?

25 MR. BROWN: Just a --

1 MR. CHAIRMAN: I'm trying to go
2 one, two and get out, so...

3 MR. BROWN: All right.

4 MR. CHAIRMAN: Something on the
5 record real quick.

6 MR. BROWN: It was signed on
7 10.26, so...

8 MR. CHAIRMAN: It was what?

9 MR. BROWN: It was signed by the
10 voter on 10.26 according to the affidavit.

11 MR. CHAIRMAN: Okay.

12 Questions?

13 MR. DURNIL: May I ask Counsel?

14 MR. CHAIRMAN: Please.

15 MR. DURNIL: What does the law
16 say about the postmark or about arrival?

17 MR. KING: Mr. Chairman,
18 Commissioner, with the exception of military
19 and overseas voters, the postmark is not
20 relevant for timeliness under the statute.
21 An absentee ballot must be received in time
22 for either delivery to the polls on Election
23 Day or by the central count counters on
24 Election Day. There is no exception for
25 postmark in other cases.

1 MR. CHAIRMAN: Motions?

2 MR. DURNIL: I would move that
3 the -- the ballot arrived late and it not be
4 counted.

5 MR. CHAIRMAN: Second?

6 Discussion?

7 All in favor?

8 Aye.

9 MR. DURNIL: Aye.

10 MR. CHAIRMAN: Opposed?

11 MR. KUZMAN: Aye.

12 MR. CHAIRMAN: One opposed.

13 Motion carries two to one.

14 Mr. Skolnik.

15 MR. SKOLNIK: Counsel, are there
16 any other objections pertaining to this
17 precinct?

18 MR. BROOKS: We withdraw ours.
19 Oh, that was Exhibit 1. We've already argued
20 that. Thank you. Nevermind.

21 MR. SKOLNIK: Mr. Chairman, the
22 tally for precinct Center North in Posey
23 County, 172 votes for Mr. Deig, 282 votes for
24 Ms. McNamara, one invalid ballot cast for
25 Mr. Deig, one invalid ballot cast for

1 Ms. McNamara, seven no votes.

2 MR. DURNIL: I would move we
3 accept the tally as final.

4 MR. CHAIRMAN: Second.

5 All in favor?

6 MR. DURNIL: Aye.

7 MR. CHAIRMAN: Aye.

8 Opposed?

9 MR. KUZMAN: Aye.

10 MR. CHAIRMAN: Motion carries two
11 to one.

12 Mr. Skolnik.

13 MR. SKOLNIK: Mr. Chairman, the
14 next precinct is Center South. This is
15 another precinct in which the tally sheet did
16 not reflect any disputed ballots but for
17 which Mr. Brown indicated that he had a
18 challenge or dispute.

19 MR. CHAIRMAN: Mr. Brown.

20 MR. BROWN: After reviewing our
21 materials, we actually would just simply --
22 if there's no notation for the record, we'd
23 simply withdraw that objection.

24 MR. CHAIRMAN: Thank you.

25 Any other objections to be withdrawn or

1 disputes, Mr. Skolnik?

2 MR. SKOLNIK: I'm not -- the
3 tally sheet does not reflect any,
4 Mr. Chairman, and, therefore, the final tally
5 in precinct Center South would reflect 75
6 votes for Mr. Deig, 100 votes for
7 Ms. McNamara, four no votes.

8 MR. DURNIL: I move we accept the
9 tally as final.

10 MR. KUZMAN: Second.

11 MR. CHAIRMAN: Motion and a
12 second.

13 All in favor?

14 Aye.

15 MR. DURNIL: Aye.

16 MR. CHAIRMAN: Motion carries
17 unanimously.

18 Mr. Skolnik.

19 MR. SKOLNIK: Mr. Chairman, the
20 next precinct is Harmony Number 1. The tally
21 from the State Board of Accounts reflects 95
22 votes for Mr. Deig, 89 votes for
23 Ms. McNamara, one disputed valid ballot
24 tallied for Mr. Deig, one invalid ballot
25 tallied for Mr. Deig, four no votes.

1 MR. CHAIRMAN: Counsel.

2 MR. BROWN: I'm sorry. We have
3 no objections -- or no disputes remaining.
4 We withdraw if we do.

5 MR. SKOLNIK: Harmony Number 1,
6 Mr. Brooks, do you have any --

7 MR. BROOKS: We withdraw our --

8 MR. SKOLNIK: You're withdrawing?

9 MR. BROOKS: -- challenges.

10 MR. SKOLNIK: Mr. Chairman, the
11 final tally in Harmony Number 1, therefore,
12 reflects Mr Deig 95 votes, Ms. McNamara 89
13 votes, one invalid ballot tallied for
14 Mr. Deig, four no votes.

15 MR. DURNIL: I move we accept the
16 tally as final.

17 MR. CHAIRMAN: Second.

18 All in favor?

19 MR. KUZMAN: Aye.

20 MR. CHAIRMAN: Aye.

21 MR. DURNIL: Aye.

22 MR. CHAIRMAN: Motion carries
23 unanimously.

24 Mr. Skolnik.

25 MR. SKOLNIK: Mr. Chairman, the

1 next precinct is Lynn East. The tally
2 presently for -- the present tally for Lynn
3 East reflects 124 votes for Mr. Deig, 111
4 Ms. McNamara, one disputed valid ballot
5 tallied for Mr. Deig, six no votes.

6 MR. CHAIRMAN: Mr. Brown.

7 MR. BROWN: Our disputes are
8 again -- well, I can -- these are related to
9 electronic ballots. It's Exhibit -- Lynn
10 East, Exhibit 4, Exhibit 5 and Exhibit 6.

11 MR. CHAIRMAN: Lynn East, 4, 5
12 and 6.

13 MR. BROWN: Correct.

14 (Off the record - Distributing
15 exhibits)

16 MR. CHAIRMAN: We are prepared.

17 MR. BROWN: Mr. Chairman, this is
18 a voter who signed the back of the poll book,
19 and the reason -- although, the fact pattern
20 is similar to before, this voter actually --
21 in contacting the clerk's office, we can find
22 no record of this voter actually being
23 registered. And she was signed into the back
24 of the poll book. The -- there's no variance
25 on the State Board of Accounts listing of

1 signatures and no variance between those
2 signatures and the poll book and the votes on
3 Election Day; therefore, we would request,
4 because of a voter who was not registered and
5 because this ballot, electronic ballot has no
6 way of being tracked, we would again request
7 a special election for the Commission's
8 consideration. Thank you.

9 MR. CHAIRMAN: Just again for the
10 record, how do you know this person voted?
11 How do you know he wasn't challenged and sent
12 away after signing this? It's not a trick
13 question; I'm just trying to understand the
14 facts.

15 MR. BROWN: The -- there's a
16 tally during the audit of the signatures in
17 the poll book and the signatures on the
18 cartridge printed from the machine.

19 MR. CHAIRMAN: Signatures on the
20 cartridge?

21 MR. BROWN: Yes. And I can -- I
22 don't know if the Commission members have
23 this tally from the State Board of Accounts,
24 but it was 204 to 204, so unless we are
25 assuming there was another mistake, which I

1 don't think -- the evidence shows that this
2 voter was counted and allowed to vote on
3 Election Day.

4 MR. CHAIRMAN: Because there's
5 203 signatures in the poll book and this
6 makes 204.

7 MR. BROWN: Right. Correct.

8 MR. CHAIRMAN: Counsel.

9 MR. BROOKS: Well, we've seen
10 where -- instances where people don't sign
11 in; people sign in; people don't want to
12 wait. I mean, there's a lot of reasons why
13 the signatures don't match, but I would just
14 incorporate all my arguments before. He's
15 asking for a special election. He doesn't
16 have that remedy because this contest was
17 dismissed. And there's no ballot here for us
18 to count today, which is what our job is --
19 or your job, and so rather than repeat all
20 the things I've already said, I'll just sort
21 of incorporate them and move on.

22 MR. CHAIRMAN: I'm just curious.
23 Do you have any specific explanation for how
24 this occurred --

25 MR. BROOKS: I recall --